O. Prim Education

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File No. 50

Legal Department

A BRANCH

Subject:—

Opinions under the Bombay Primary Education Act, 1947

O Prim. Education/50

File No.

Gen. 184-e.

295-A

C O N T E N T S.

Legal Department File No. C Primary Education /50.

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C O N T E N T S.

Legal Department File No. 0 Primary Education /50.

Sr. No.	Comilation No.	Subject.	Pages.
8)	C.No. 5307/19-4-50.	Ss. 5(6) and 7(1)(b).- Quertion whether ~~xxxxxx~~ on the employment of the daughter of the member of the L.S.B. as a teacher under the L.S.B. the member concerned would be disqualified under sec. 7(1)(b) of the Act from continuing to the member.	23-26.
9)	C.No. 5389/20-4-50.	Ss. 3(1) and 10 A. B'bay Local Boards Act, 1923. sec. 4(1). Question 1) whether a school Board can be constituted under sec.4(6) of the B.P.E., Act, 1947 though no Local Board has been constituted for the Dangs Distt. under the B.L. Boards Act., 2) Whether the od hoc Board appointed by Govt. is in accordance with the provisions of the B.P.E. Act, 1947,	27-32-
10)	C.No. 6786/18-5-50.	Question whether the Bom. Civil Services (safe guarding of Natural Security) Rules, 1949, can be made applicable mutatis mutandis to the teaching and non-teaching staff of the D.S. Boards and the teaching staff of authorised Municipalities. Sec. 20(2) and (3). B'bay civil Services (safe guarding of Natural Security) Rules, 1949. Rule 3.	33-34.
11)	C.No. 5020/12-4-50.	Re: Definition of "Local authority" given in the General Classes Act, 1897 and 1904.	35-36.
12)	C.No. 7824/9-6-50.	Re: Application of the B'bay ~~xxxxxxxxxxxxxx~~ Primary Education Act, 1947 to Baroda state on its merger with this Province.	37-38.
13)	C.No. 9108/3-7-50.	Sec. 12.- Re: Sale proceeds of school buildings. Right of D.L.B. on the -	39-40.

C O N T E N T S.

Legal Department File No. C Primary Education /50.

Sr. No.	Compilation No.	Subject.	Pages.
14)	R. T.No. 9461/3-6-50.	G. C. P. L. No. 7896/30-5-50. Re: Primary Education fund Institution of the by the D.S. Boards in the new districts formed of the mergered states.	41-42.

PHH 6/8

MLCD 6/6

Office of the P.L.A.

The Bombay Primary Education Act, 1947. Secs. 4(9) and (10).

The view taken by the Secretary, Education Department, is correct.

Under section 4, sub-section (9) of the Bombay Primary Education Act, 1947, except as otherwise provided in this Act the term of office of a member of a School Board shall cease on the expiry of the term of the electing District Local Board or authorised municipality. The proviso to this sub-section provides that the term of office of such members shall not be deemed to expire by reason only of the fact that the District Local Board or the authorised municipality is dissolved or superseded. Sub-section (10) clause (a) provides for the constitution of a new district school board if the term of the school board expires during the supersession of the electing District Local Board or the authorised municipality. There is no express provision in the Act either for extending the term of the school board or for its re-constituti of its term expires after the re-constitution of a dissolved District Local Board or aurthorised municipality. Consequently the proviso to sub-section (9) will apply and the old district school board will continue in office for its full term of life notwithstanding the dissolution of a distri local board and its re-constitution under sections 131 and 131A of the Bombay Local Boards Act, 1923. The District School Board, Ratnagiri, would therefor be entitled to continue in office until 31st March 1950 on which date the term of the electing District Local Board, Ratnagiri, would have expired.

2. The re-constituted District Local Board, Ratnagiri would be entitled to elect a new district school board after the expiry of term of office of the members of the existing school board.

But the term of office of the members of such new district school board thus constituted will expire on 30-11-1950 on which date the term of the re-constituted District Local Board will expire (see section 4(9) of the Bombay Primary Education Act). It is, therefore, apparent that the term of office of the new District School Board would be from 31st March 1950 to 30th November 1950. It would, therefore, be for the Education Department to consider whether in such cases it is worth-while to constitute new district school boards for such short periods; or whether instead of taking any power by legislation on the lines of section 4, sub-section (5), clause (c) to extend the term of office of the old boards they should be allowed to function for the period under section 4, sub-section (1) without holding new elections.

Sd/- 3/2

Remembrancer of Legal Affairs.

U.R. to E.D., No. 87-Confl. dated the 3rd February 1950.

N.V.D.
7/7
4c.

4615.dt. 16-3-50.

Submitted with reference to E.. office note at pp. 5 6 ante. The question for the consideration of the T.L.A. is whether District School Boards and Municipal School Boards constituted under the Bombay Primary Education Act, 1947, are local authorities.

N.V.D.
7/7
4c.

Office of the P.L.A.

The ~~xxxxxx~~ view taken by the Secretary, Local Self Government and Public Health Department, in paragraph 5 of his note at pages 3-4- ante is correct.

Sd/- 20/3

Remembrancer of Legal Affairs.

U.O. to P.D. No. 3980 , dated the 20th March 1950.

N.V.R.
7/7
4c.

(Please also see R.L.A.'s U.O. to P. & S.D. No. 5020, dt. 12-4-50)

Office of the E.L.A.

Dissolution of D.L.B. Maindurgi and Sholapur and their re-constitution. Bom. Primary Education Act, 1947-section 57(1).

The area comprising the Maindurgi taluka of of the Kurundwad (Junior State) is included in the Sholapur District and the Sholapur District is reconstituted by P. and S.D. Notification No. 2755/45-J, dated 29th July 1949. Bu H. and L.G.D. notification No. 6008/33, dated the 1st August 1949, all District Local Boards of the areas forming part of the merged States except those prescribed in the Schedule have been dissolved etc. Thus the D.L.B. Maindurgi is dissolved by this notification. Bu H. and L.G.D. notification No. 5929/33, dated the 28th December 1949 the D.L.B. Sholapur is dissolved with effect from 10-1-1950 and a new D.L.B. is constituted for the new Sholapur District as reconstituted which includes the Maindurgi taluka of the Kurndwad (Junio State). Section 3(1) of the Bombay Primary Educatio Act, 1947 provides that for each district there shall be a district school board. Sub-section (9) of section 4 provides that except as otherwise provided in this Act, the term of office of the members of a school board s all cease on the expiry of the term of the electing district local board or authorised municipality. Provided that the term of office of such members shall not be deemed to expire by reason only of the fact that the D.L.B. or authorised Municipality, as the case may be, is dissolved or superseded. Consequently although the D.L.B. Maindurgi and L.L.B. Sholapur are dissolved and the latter is reconstituted for the new District of Sholapur the term of offic of members of district school boards for Maindurgi and Sholapur continues. Thus two school boards exist in the Sholapur district as reconstituted.

As in the case of the District Local Boards, it will, therefore, be necessary to dissolve both the school boards under section 57(1) on the ground of alteration of limits of district rather than under section 56 which provides for dissolution for inconvenience and to reconstitute one school board for the new Sholapur district as provided in section 57(1) (i) and (ii).

sd/- 1/4

Remembrancer of Legal Affairs.

U.P. to R.L. No. 4476 dated the 3rd April 1950.

N.V.D.
7/7
4c.

Office of the P.L.A.

The Bombay Primary Education Act, 1947; and The City of Kolhapur Primary Education Act, 1942.

The view taken by the Education Department in its office note dated 3-10-1949 is correct in so far as it relates to the Shikshan Samiti constituted under the city of Kolhapur Primary Education Act, 1942, continuing as School Board to function under the Bombay Primary Education Act, 1947. The Kolhapur Borough Municipality was an authorised municipality to administer the primary schools under the City of Kolhapur Education Act, 1942 and a Shikshan Samiti was constituted under section 3, sub-section (1) of that Act for the purpose. When the City of Kolhapur Primary Education Act was repealed and the Bombay Primary Education Act, 1947 was applied by the Kolhapur State (Application of Laws) Order, 1947 the Shikshan Samiti was by virtue of para 6 of that Order deemed to be a school board under the Bombay Primary Education Act, 1947. Consequently, that Shikshan Samiti would be entitled to continue to function until it is superseded or dissolved under section 56 or its period expires. To dissolved ~~xxxxxxxxxx~~ or to supersede that Shikshan Samiti under section 56, sub-section (1) it is necessary that in Government's opinion the Samiti must be considered to be incompetent to perform or to be not properly performing the duties imposed on it by or under this Act or the rules etc.; or to be exceeding or abusing powers or to be acting or had acted contrary to the provisions of this Act etc. Merely because the Samiti was constituted under the City of Kolhapur Primary Education Act, 1942, it cannot be considred to be incompetent to perform its duties. In his letter dated 13th April 1949, the Director of Public Instructions

appears to be of opinion that the Samiti is very communally minded and needs to be reconstituted as early as possible. Government may inquire whether there are any concrete instances of the communal bias which would justify a finding that the Samiti is not properly performing the duties imposed on it; and then consider whether supersession on that account is feasible.

Sd/- 28/2

Remembrancer of Legal Affairs.

U.P. to W.D. No. 2878, dated the 1st March 1950.

N.V.D.
7/7
4c.

Consequent upon the merger of States with the State of Bombay, several new districts have been formed and for the purposes of the Bombay Primary Education Act, 1947, new District School Boards are being constituted for these districts. As these School Boards are required to maintain a primary education fund under section 44 of the Act, the L.A. D. was requested to report whether all the Dy. Educational Inspector cum A. Os. in merged areas are regularly receiving the contributions payable by the non-authorised Municipalities, if any, in their jurisdiction. The E.L. office proposes to ~~[illegible]~~ issue a Circular providing that the contribution s re-covered from the non-authorised Municipalities should be credited to the P.F. Fund of the School Board as soon as it constituted. The Secretary, F.D. , however, considers that Govt. cannot require District Local Board on a non-authorised Municipality to pay contributions fixed under Section 41 of the Bom. P.F. Act before a School Board is established for the district. EdL.A. is requested to advise.

N.V.D.
7/7
4c.

Office of the M.I.A.

Bombay Primary Education Act, 1947. Section 44(1)&(2), 44 and 45.

The view expressed by the Secretary, Education Deptt., is correct.

sd/- 27/4

Remembrancer of Legal Affairs.

M.P. to M.D. , No. 5733, dated the 27th April 1950.

N.V.L.
7/7
Mc.

Under G.F.F.L.No. 544 dt. 28-3-1905, Govt. sanctioned a grant of Rs. 6455/- to the M.E. Mission, Madiad, equal to half the cost of the building exclusive of the cost of the portion set aside for religious purposes. A trust-deed dt. 24-2-1910, was executed in respect of the said grant. When the management of the M.E. Mission found that the Primary School Building was not sufficiently commodious, they began to use the Industrial School which closed down in 1938. As the original primary school building is now lying vacant and as the management is willing to refund the amount of the building grant, it wants to know the terms on which Govt. would be prepared to release it from the obligations of trust.

The D.E.O. refers to note below rule 11 of the Building Grant Rules in Schedule I to the E.F. Rules, 1949, and states that it for consideration whether the Mission should be asked to pay half of the present estimated value of the building which has appreciated considerably or whether the amount of Rs. 6455/- paid by Govt. by way of grant, should be recovered from the Mission. The Secy. E.D. considers that from the ~~xxxxxxxxxxxxxxxxxxxxxxxxxx~~ trust-deed it appears that we can only claim the amount of Govt. grant. P.L.A. is requested to advise whether his view is correct.

N.V.D.
7/7
4c.

U. R. No E.D. No. 5280. dt 20-4-50.

Office of the P.L.A.

Bombay Primary Education Act, 1947. Sections 35 and 36.

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Bombay Village Panchayats Act, 1933. Section 41(f).

The view taken by the Commissioner, N.D. is correct in so far as it relates to offences under S. 35-xxx of the Bom. Prim. Education Act, 1947. It is true that that powers under section 41, clause (f) item 1 of the Bombay Village Panchayats Act, 1933 cannot be exercised by a Nyaya Panchayat unless it has been specifically authorised under section 37, sub-section (2). But that provision was consistent with section 21 of the old Bombay Primary Education Act, 1923. That Act has been replaced by the Bombay Primary Education Act, 1947. Under section 35 offences in a village where a Panchayat has been constituted can be tried only by xxxxxx Village Bench. Consequently the Nyaya Panchayat constituted under the Bombay Village Panchayats Act will have power to try offences under section 35 of the Bombay Primary Education Act, 1947 irrespective of the fact whether such Nyaya Panchayat has or has not been empowered under section 37, sub-section (2) of the Bombay Village Panchayats Act. It is, therefore, apparent that item 1 of clause (f) of section 41 of the Bombay Village Panchayats Act has now become redundant in view of section 35 of the Bombay Primary Education Act, 1947 and may be deleted. Incidentally it may be added that the expression "village bench" occurring in section 35(ii) of the Bombay Primary Education Act, 1947 should be replaced by the new correct expression "nyaya panchayat".

Sd/- 10/3

Remembrancer of Legal Affairs.

U.O. to L.S.G. and I.N.D. , No. 3464, dated the 13th March 1950.

N.V.D.
7/7
4c.

One Miss Vimal Shankar Sardal, daughter of Mr. V.D. Sardal, member of the D.S.B., Ratnagiri, who had applied for teacher's post, has been selected by the staff selection Committee. The Administrative Officer, Ratnagiri has raised the question whether on her employment as a Primary teacher under the D.S.B. Ratnagiri, her father, Mr. V.D. Sardal would be disqualified under 7 (1)(b) of the Bom. Primary Education Act, 1947, from continuing to be a member of the D.S.B. Ratnagiri, Secy. E.D. inter alia states "sect. 5(g) definitely forbids only an employee or a teacher in any approved school from being a member of the School Board. By implication, it must be presumed that a person whose son or daughter is an employee of the D.S.B. is not debarred from being a member. As explained by the D.E.O., the DSB. has very little to do with the appointments or disciplinary action against Primary teachers and I do no think that Mr. Sardal has incurred any disqualification" P.L.A. is requested to advise whether Secy. E.D's view is correct.

N.V.D.
7/7
4c.

Office of the P.L.A.

Bombay Primary Education Act, 1947. Sections 5(f) and 7(1)(b).

Seen and returned.

The view takne by Secy. E.D. is correct.

Sd/- 18/4

Remembrancer of Legal Affairs.

U.P. to E.D. , No. 5307, dated the 19th April 1950.

N.V.D.
7/7
4c.

Sections 3(1) and 10A of the Bombay Primary Education Act, 1947 and section 4(1) of the Bombay Local Boards Act, 1923.

By G.R., R.D. No. 6775/45(c), dated the 10th July 1948, issued under section 7 of the Bombay Land Revenue Code, 1879, Government directed that the District of Dangs, which, under the Bombay Enlargement of Area and Alteration of Boundaries Order, 1947, was formed a separate District of the Province of Bombay, should be a District which shall consist of a single taluka consisting of the villages specified in the schedule thereto appended with effect from the 15th July 1948. Although this area was constituted a District under the Land Revenue Code, Government considered it inexpedient to establish a District Local Board for the Dangs District, and by virtue of the powers vested in Government under the proviso to sub-section (1) of section 4 of the Bombay Local Boards Act, 1923, Government directed that all powers and duties exercisable by or on behalf of a local board under that Act or any other law for the time being in force should in that District be exercised and performed by the District Development Board, Dangs, constituted under G.R., A. and F.D. No. 2937, dated 31-1-1950. By G.R., P.E., No. S 86(20), dated 11th November 1949, Government decided that the responsibility for imparting primary education in the Dangs District should be undertaken by Government should be carried out either Departmentally or through a Board to be appointed by Government and directed that a Board to be known as the Board for Primary Education in Dangs District should be appointed for the management and conduct of primary education in that District. Shri Bidkar, one of the members of the said Board has raised the following questions:

(1) Whether Government can appoint such a Board as per P.E. Act of 1947?

(2) Whether Government can give away the powers of an Administrative Officer to such a Board?

(3) Whether Government can set aside the sections of the P.E. Act, 1947, in formation of the Board.

Secretary , P.D. observes:

"The P.D. notification seems to suggest that the Dangs district is in the same position as any other district ~~in~~ in the ex Province and does not enjoy constitutionally any special position. P.L.A. will no doubt be able to check this. If the Dangs has no special position, it seems to me that under section 3(1) of the B.P.E. Act, 1947, read with section 1(2) of the same Act, a D.S.B. under the provisions of the Act must be constituted for the Dangs.

"As there is no D.L.B. in the Dangs, it will not be possible in any case to hold regular elections. Action will be necessary under section 4(8).

"Government has decided to select an ad hoc Board instead of a regular D.S.B. in view of the backward nature of the country. The point is whether such an arrangement is forbidden by the B.P.E. Act, 1947."

Before the Bombay LocalBoards Act, 1923, was amended by the Bombay Local Boards (Amendment) Act, 1949, it was absolutely necessary to constitute a District Local Board for each District and under the Bombay Primary Education Act, 1947, before it was amended by the Bombay Primary Education Act of 1949, it was also necessary to constitute a District School Board for each District even though a Board may have been ~~xxxxxxx~~ constituted for that District ~~even though a Board may have been constituted for that District~~ under the provisions of section 4(1) of the Bombay District Local Boards Act. P.L.A's opinion No. 6429 dated 11-6-1949 would not be applicable, since the person ~~xxxx~~ or persons appointed under section 4(1) are capable of exercising all the powers of a District Local Board. But after those Acts were amended by the Acts of 1949 as stated above, it is in the discretion of Government to decline to constitute a D.L.B. for a District and a

D.S.B. for such District, if it is considered inexpedient so to do. In the present case Government considered it to be inexpedient to constitute a District Local Board for the District of the Dangs area and constituted a Board under the proviso to section 4(1) of the Bombay District Local Boards Act. When no D.L.B. was constituted for that area, it was open to Government to appoint an authority under section 10A(1) of the Bombay Primary Education Act, 1947, to exercise such powers and perform such duties as Government may direct from time to time. Although a Board was constituted for the Dangs area to exercise the powers of the District Local Board, it appears that no regular order was passed under section 10A(1) of the Bombay Primary Education Act specifying the authority to exercise the powers of a District School Board. Government has however, constituted a Board of non-officials known as the Board for Primary Education for Dangs District for the management and conduct of primary education in the Dangs of District. Until action irregularly taken under section 10A of the Bombay Primary Education Act, 1947, the present Board for Primary Education for Dangs District is not only without any statutory authority but is illegal in that it is opposed to the provisions of section 3(1) of the Bombay Primary Education Act, 1947. It appears, therefore, necessary that Government should pass a regular order in exercise of the powers under section 10A, specifying this Board as the authority to exercise the powers and perform the duties of a D.S.B. When this is done, there would be no legal objection to the Board exercising the powers and performin the duties of a D.S.B. under the B.P.E. Act. This Board cannot exercise the powers and duties of an Administrative offic under the Act. Government will have to take steps to appoint an Administrative Officer for the area.

sd/- 19/4.

Remembrancer of Legal Affairs.

U.P. to S.D., No. 5389 dated the 20th April 1950.

N.V.D.
9/7

Please see the P. & S.D. office note dt. 28-3-50 and para 2 of the P.D. office note dt. 3-5-50.

pp. 3-4 ante.

The question for consideration is whether the Bom. Civil Services (safeguarding of National Security) Rules, 1949, can be made applicable mutatis mutandis to the teaching and non-teaching staff of District School Boards and the teaching staff of authorised Municipalities

P. 1 of Corresp.

"Seen and returned".

Sd. 15/5-

U.P. to P.D. No. 6785, dated the 18th May 1950.

N.V.D.
9/7
4c.

Office of the P.E.A.

The definition of "Local authority" given in the General Clauses Act, 1897, will not be relevant to a list of local authorities in Bombay. We should rather be guided by the definition given in the Bombay General Clauses Act, 1904. Section 226 3(26) of the Bombay General Clauses Act defines a "local authority" to mean a municipal corporation, municipality, local board, body of Port Trustees or Commissioners or other authority legally entitled to or entursted by the Government with the control or management of a municipal or local fund. This definition makes a distinction between a minicapal copporation and a municipality. Now that we have more than one municipal corporation, it would be necessary to enumerated municipal corporations separately in the list. It is tue that in my opinion opinion No. 3940 dated 20th March 1950 I have held that a school board is a local authority. But that opinion was based on the concluding portion of the definition of "local authority" quoted above. A school board would not be include in the term "local board". If I remember right, it was decided not to include school boards in the list of local authorities for the purpose of representation to the Legislative Council. In this State there are no local authorities of the description of "District Boards" Taluka Local Boards have also been abolished.

2. The corrected list for Bombay should, therefore, be as follows:-

(1) Municipal Corporations
(2) Municipalities
(3) District Local Boards
(4) Cantonment Boards.

Sd/- 12/4

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No.5020, dated 12th April 1950

Legal Department.

To achieve the object in view all that is necessary is to repeal the entry "the Bombay Primary Education Act, 1947 (Bom. LXI of 1947)" in the Third Schedule to the Bombay Merged States (Laws) Act, 1950 which has been recently passed; and on such repeal the Bombay Primary Education Act, 1947 without any amendment would be applicable to the Baroda State area merged in the Bombay State. It will have to be done by legislation.

Sd/-

Additional Secretary to Government.

U.O. to P.D. No. 7824 dated the 9th June 1950.

N.V.D.
9/7
4c.

Office of the P.L.A.

Bombay Primary Education Act, 1947. Section 12.

Sale proceeds of school buildings

It is admitted that the two school buildings were sold by the District Local Board, Panch Mahals, before the Bombay Primary Education Act, 1947, came into operation Under section 12 of the Bombay Primary Education Act, notwithstanding anything contained in any law on the date of the coming into force of this Act, all primary schools with their lands, buildings, records, equipment and all other properties, moveable or immoveable, which were vested in held by or were under the control of the District Local Board for the purpose of primary education immediately before the said date, shall on the said date be vested in, held by or be under the control of the District School Board for the said purposes. Moveable property includes money (see 24 Allahabad 27 - 3 Bom. L.R. 576). Consequently, the sale proceeds of these two buildings would certainly vest in the District School Board, Panch Mahals, provided the District Local Board held or had the control of them on sale of the buildings for the purposes of primary education immediately before the Act came into operation. One of the buildings was constructed out of the grants made by Government. These grants were evidently meant for building a primary school building. If the building was held by the District Local Board for the purposes of primary education, its sale proceeds would also vest in that Board for the same object, that is to say, Primary education. This inference is reinforced by the fact that Government's grants out of which the building was constructed were for the same purposes of primary education. So far as the second building is concerned, it was donated by the people. It would, therefore, follow that the building was impressed with trust and its sale proceeds would also require to be used for the same purpose (See P.L.A.'s opinion No. 210-Confl, dated 30th March 1949). Government may, therefore, direct

the District Local Board, Panch Mahals, to hand over the sale proceeds of both the buildings to the District School Board with a direction that they should be utilised for erecting new buildings for primary schools in that village.

Sd/- 1/7

Remembrancer of Legal Affairs.

U.R. to L.S.G. and P.H.D., No. 9108, dated the 3rd July 1950.

N.V.D.
9/7
4c.

Office of the P.L.A.

Attention is invited to P.L.A's opinions Nos. 129-Confl. dated the 24th February 1949 and 242-Confl. dated 11th April 1950 in which the question is exhaustively discussed. No doubt under rule 108(1) of the Bombay Primary Education Rules every private school which has been recognized as an approved school shall be entitled to a grant if it applies for such grant. But as pointed out in the above opinions, if an institution is granted State aid, it must be thrown open to all communities. Rule 108(1), therefore, requires to be amended so as to harmonise it with the provisions of the Constitution. On so amending the rule Government would be justified in refusing grants-in-aid to such institutions on the ground that they offend against the provisions of Article 29(2), which provides thatno citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

sd/- 22/4

Remembrancer of Legal Affairs.

U.P. to P.L.A. Deptt. 5565, dated the 24th April 1950.

N.V.D.
9/7
4c.

Office of the P.L.A.

Bombay Primary Education Act, 1947, sec. 18A: Whether Primary school teachers of the Savantwadi State can contribute to the General Provident Fund.

Attention is invited to section 18A of the Bombay Primary Education Act, 1947 as inserted by Bombay Act 46 of 1949. That section was added with a view to enforcing the provisions of the Bombay Primary Education Act, 1947, in the merged areas; and to facilitate the transfer to the District School Boards of the teaching and non-teaching staff and the lands, buildings and properties etc. employed by, vesting in or held by or under the control of Government or a local authority in the merged areas for the purpose of primary education. Sub-section (1) of section 18A provides for the vesting in a District School Board of all primary schools with their lands and buildings, records, equipment and all other properties moveable or immovable. Sub-section (4) requires the district school board to take over and employ the primary school teachers in the employment of the States concerned immediately before the date of merger on the same terms and conditions on which they were employed by the Government of the State or on such conditions as the Government of Bombay may direct. The effect of section 18A is that the primary school teachers in the Savantwadi State are now in the employment of the District School Board, Ratnagiri, and the accumulations in the provident fund to their credit are now vested in that Board which would be holding the amount in trust for the said teachers. (Vide P.L.A's opinion No. 12251, dated 26-8-50). Ordinarily there would therefore appear no difficulty in transferring the accumulations to the Provident Fund of the District School Board, Ratnagiri. No amendment of the Bombay General Provident Fund Rules appears to be necessary. But in view of sub-section (4) of section 18A, the benefits regarding provident fund will depend on what terms and conditions the primary school teachers have been taken over by the District School Board, Ratnagiri.

Sd/- 9/9

Pamembrnacer of Legal Affairs.

U.P. to P.D. No. 12953, dated the 11th September 1950.

N.U.D.
9/7
4c.

Office of the D.P.I.

Bombay Primary Education Act, 1947.

Sections 16(1), (19) 1 & (3);

Transfer of provident fund accumulations to Belgaum Municipality.

Sub-section (1) of section 16 of the Bombay Education Act, 1947, empowers the State Government to authorize a municipality constituted under the Bombay District Municipal Act, 1901, or the Bombay Municipal Boroughs Act, 1925, to control all approved schools within its area. Sub-section (1) of section 19 provides that all properties moveable and immovable vesting in, held by or under the control of the district school board of the district in which it is situated or such authorized municipality as the State Government may specify; and all existing and future rights, liabilities, powers and duties of any such non-authorized municipality in respect of primary school teachers and other persons employed by it for such purposes shall vest in and be performed or exercised by such authorized municipality. Sub-section (3) makes similar provision for transfer of liability and the vesting of property in the event of a non-authorized municipality being authorized by the State Government to control approved schools within its area. It would be seen from these provisions that as soon as the control over primary education is transferred from a non-authorized municipality to an authorized municipality, all properties held for purposes of primary education are vested in such authorized municipality and the liabilities and duties of the non-authorized municipality and ~~the liabilities and duties of the non-authorised municipality~~ in respect of primary school teachers and other persons are also passed on to the authorized municipality. As a result the provident fund accumulations

of the employees tran ferred would now vest in the municipality of Belgaun which is an authorized municipality for the purposes of the Bombay Primary Education Act, 1947. It is not therefore necessary to resort to the remedies suggested by the Administrative officer and the F.& P.D. F.L.A.'s opinion No. 5776, dated 25-6-40 referred to by the Examiner Local Fund Accounts, has no application in this case.

Sd/- 26/8

Remembrancer of Legal Affairs.

U.R. to F.D. No. 12251, dated the 26th August 1950.

N.V.L.
9/7
4c.

Office of the E.I.M.

Bombay Primary Education Rules, 1949.

Forms of Trust Deeds in Schedule I.

Sanction of Com. for transfer of buildings in favour of Government.

The view taken by L.S.G. & I.H.D. is correct. A district school board being a corporate body in whom the school buildings vest, the proviso to section 47 of the Bombay Local Boards Act, 1923 which requires the sanction of the Commissioner to the transfer of property would be inapplicable to the transfer of school buildings vesting in a district school board.

A school board constituted for an authorised municipality is not a corporate body, nor does the property required for purposes of primary education vest in it. Such property would vest in the municipality as authorised municipality. Although the municipality qua authorised municipality would hold it, it appears that the provisions of the municipal Act regarding the sanction of the Commissioner for the transfer of property would apply even to such property.

Sd/- 12/8

Remembrancer of Legal Affairs.

U.P. to E.D. No. 11555, dated the 14th August 1950.

N.V.D.
9/7
4c.

No. 16337
2-9-50.

The management of the primary schools in the Kolhapur State was entrusted by the State Govt. to the Shikshan Prasarak Mandal in 1947. This arrangement was to remain in force for a period of five years and the Mandal was to receive an annual grant of Rs. 99,900/-(vide the Kolhapur Govt. Reso. at page 7 of the correspondence section). Even after the merger the D.P.I. has paid to the Mandal the grant due in respect of the years 1948-49 and 1949-50. It is since found one of the schools are not managed satisfactorily and the D.P.I. proposes that the control of the Mandal in the matter should be taken away or the arrangement should be cancelled. The P.D. has noted that theorders issued by the Kolhapur Govt. in1947 being of an executive nature they can be cancelled by the State Govt. The P.L.A. is requested to advise.

N.V.D.
9/7
4c.

Office of the D.I.A.

In view of the concluding paragraph of the letter of the Secretary, Shikshan Prasarak Mandal, Kolhapur, dated 25th April 1950 (page 15 post) there would be no legal objection to Government terminating the Shikshan Prasarak Mandal's contract with the Kolhapur Durbar, but it cannot be modified without the consent of the Shikshan Prasarak Mandal.

Sd/- 19/9

Remembrancer of Legal Affairs.

U.O. to F.D. No. 13326, dated the 19th September 1950.

N.V.P.
9/7
40.

Office of the D.I.O.

Section 10A of the Bombay Primary Education Act, 1947, provides that otwithstanding anything contained in the Act etc. etc., in any District for which a District Local Board has not been established, the powers and duties of the District School Board under this Act shall be exercised and performed by such authority as the Provincial Government may appoint. The exercise of such powers and the performance of such duties shall be in accordance with such directions as the Provincial Government may from time to time give. This provision empowers Government only to give directions in the exercise of the powers and the performance of the duties which the authority exercises or performs in the place of the District School Board. It would not entitle Government to remodel the various provisions of the Act or to change the nature and scope of the duties and powers itself. It appears that the Collector of Dangs is the Chairman of the authority. The Act contemplates that the Administrative Officer should be the Chief Executive officer of the Board. He is not a member of the Board, and, therefore, he cannot be a member of the authority which takes the place of the Board but must continue to be a distinct functionary who is to serve as the executive officer of the authority. Similarly, section 23 of the Act provides for a staff selection committee consisting of the officer designated by the Director, the Chairman, of the School Board and the Administrative Officer. Section 24 contemplates that an appeal from an Administrative Officer should lie to a Tribunal consisting of the Chairman of the School Board

in respect of these provisions, and, therefore, it would be impossible to give effect to these provisions, if the offices of the Chairman and the ~~xdmxxxxxxxxxxxxxxx~~ Administrative Officer were combined in the same person.

2. In these circumstances it would not be legally feasible for the Collector to be both the Chairman of the authority and the Administrative Officer.

Sd/- 11/10

Remembrancer of Legal Affairs.

U.R. to E.D. No. 98-L, dated the 11th October 1950.

N.V.D.
9/7
4c.

Office of the B.L.A.

Bombay Primary Education Act, 1947, S. 39(2).

Bombay Primary Education Rules, 1949 Rule, 107(2).

Recognition as approved school by school Board.

Power to give recognition to a school vests in the School Board under section 39(2) of the Bombay Primary Education Act and this power being absolute, no limitation thereon such as the special permission of Government for such recognition by the School Board can be imposed by any rule. Consequently, the contention of the Municipal School Board, Surat, that the draft amendment of Rule 107(2) as notified in Government Notification, Education Department, No. 7896, dated 4th April 1950 is ultra vires is correct.

While admitting that the aforesaid amendment of Rule 107(2) is ultra vires, Secretary, Education Department considers that control can be exercised indirectly by Government by making a rule that grant-in-aid need not be given except where a school has been recognised by a School Board with the previous concurrence of Government. Under section 39(2) the manner in which the grant-in-aid is to be given to such approved school shall be as prescribed. It is apparent from this provision that rules can be made by Government prescribing the manner in which the grant is to be given to the approval school. This means that only the mode in which the grant is to be given can be prescribed by Government. To impose a condition directly or indirectly that grant-in-aid is not to be given except when a school has been recognised by a School Board with the previous concurrence of Government would in effect mean that to justify the payment of a grant-in-aid the school must have been recognised by the School Board with the previous concurrence of Government. In other words, the previous concurrence of Government would be a condition prece-

precedent to giving recognition to an approved school by the School Board. This kind of condition would not amount to the manner in which the grant-in-aid is to be given but a stipulation for payment of the grant-in-aid which would not be intra vires the provisions of section 39(2). Consequently, the proposal made by the Secretary, Education Department, would not also be legally feasible. However, the same thing can be achieved indirectly by requiring the school to obtain from the Educational authorities a certificate about fulfilment of the conditions prescribed under section 39(1) before the school can apply to the School Board for it recognition. Such conditions can be prescribed under section 39(1).

Sd/- 10/7

Remembrancer of Legal Affairs.

U.O. to E.D. No. 9677 dated the 10th July 1950.

N.V.D.
9/7
4c.

Office of the R.L.A.

Bombay Primary Education Act, 1947 Secs. 24(1) & (2), 25, 40(2), (x 50(a), etc.

Bombay Primary Education Rules, 1949, rules 61, 62, 63 etc.

Whether the Deputy Educational Inspector can be appointed as an Administrative Officer.

The question for consideration is whether there would be any legal objection to the Deputy Educational Inspector, Dangs, in his capacity as the Administrative Officer, being asked to act under the instructions of the Collector.

2. It appears from the various provisions of the Bombay Primary Education Act, 1947, that the Administrative Officer has to act under the directions of the Director of Public Instruction (vide ss. 24(1) and 25 and rules 61(3)(e), 62(e), and 63(2)(b) of the Bombay Primary Education Rules, 1949; and has also to submit different returns as required by that authority (ss 40(2), 50(a) etc.). Once an Administrative Officer is appointed he would get the powers conferred on him by the Act and these powers being statutory it would not be legal to ask him to act in the exercise of these powers in accordance with the Collector's instructions. Under the Bombay Primary Education Rules, 1949, the Administrative Officer has, on several occasions to act on the report of the Deputy Educational Inspector (vide rules 61(5) (b)(ii), and 61(7)(e). If the Deputy Educational Inspector himself is appointed as Administrative Officer it will result in rendering these provisions a dead letter. Secondly, under section 24(2) of the Act an appeal against an Administrative Officer's order of dismissal, removal reduction, etc. lies to a tribunal consisting of the Chairman and the Educational Inspector. In case of difference of opinion the appeal is referred to the Director. In the present case the Collector himself is the Chairman. If the Administrative Officers' orders are issued in consultation with the Collector

who happens to be also on the appellate tribunal the right of appeal will become illusory and the persons affected will be deprived of their right to get justice. Similar difficulties would arise ~~arise~~ in the exercise of his powers by the Administrative Officer under rules 61(2)(c) and 63(2)(e). For these reasons it does not appear feasible either to appoint the Deputy Educational Inspector as the Administrative Officer or to direct him to act under the instuctions of the Collector.

Sd/- 6/12

Remembrancer of Legal Affairs.

P.P. to P.I. No. 17356 dated the 7th December 1950.

N.V.I.
9/7
4c.

Office of the E.I.A.

Bombay Primary Education Act, 1923. Section 27.
Bombay Primary Education Act, 1947, Section 12(2) Bombay Primary Education Rules, 1949.

The contentions raised by the Administrative officer, District School Board, Panch Mahals, in his letter at page 25 of the correspondence section are: -

(1) that the Provident Fund Rules made under section 27(3)(d) of the Bombay Primary Education Act, 1923, cannot be repealed by the Bombay Primary Education Rules 1949 and

(2) that the terms and conditions on which the staff was employed under the District Local Board, Panch Mahals, have been maintained under section 12(2) of the Bombay Primary Education Act, 1947.

2. It seems that there is not much force in either of these contentions. As regards the first contention section 27(1)(b) of the Bombay Education Act, 1923, empowered the State Government to make rules regulating the provision of provident funds for the teaching, inspecting and supervising staff employed by a local authority. Rule 47(3) of the Bombay Primary Education Rules, 1924, accordingly provided that the local authority might, in accordance with the regulations which may be framed in this behalf with the sanction of Government, institute Provident Fund for the supervising, clerical teaching and inferior staff. The note to the sub-rule referred to the model providing ent Fund Rules were framed by the District School Board under section 27(3)(d) of the Bombay Primary Education Act of 1923 is not therefore wholly correct. These rules derived their authority also from rule 47(3) of the Primary Education Rules, 1924, which themselves were made under section 27 of the Primary Education Act, 1923. That Act has been repealed by section 64 of the Bombay Primary Education Act, 1947, and there is nothing in the latter Act to show that any rules or regulations made under the 1923 Act have been saved. Of course, the Bombay Primary Education

Act, 1947, and there is nothing in the latter Act to show that any rules or regulations made under the 1923 Act have been saved. Of course, the Bombay Primary Education Rules continued in force until the new rules of 1949 came into force on 1st April 1949 (vide section the Bombay General Clauses Act, 1904). Under the note to sub-rule (1) of rule 193 of the last mentioned rules, provident funds established before the coming into force of the 1949 rules shall be deemed to be provident funds established under the 1949 rules; and under sub-rule (4) of that rule the fund has to be administered, maintained and used in accordance with the rules provided in Schedule M to the 1949 rules. The Administrative Officer's view that the Provident Fund regulations made by the District Local Board under section 27(3)(d) of the Primary Education Act of 1923 are still in force is not therefore correct.

3. The next argument is that section 12(2) of the Bombay Primary Education Act, 1947, continues in force the terms and conditions on which the staff had been employed. That sub-section requires that the primary school teachers and other employees shall be taken over by the District School Board on the same terms and conditions "on which such teacher or employees were employed by the District Local Board". In the first place it is doubtful whether the matter in dispute in this case viz. whether the District School Board contribution to the provident fund should be paid every month or annually can be said to be a condition of employment. Secondly what sub-section(2) of section12 of the Act requires is that the transfer of the staff should not result in any disadvantage to them. The payment of the contribution annually instead of every month is a matter of procedure and does not touch the interest of the staff. Consequently this does not appear to me to be a matter covered by section 12(2) of the Act.

Sd/- 24/11
Remembrancer of Legal Affairs.

P.R. to E.D. No. 16518, dated the 24th November 1950.

Legal Department.

It is true that under sections 13(2)(d), 17(1)(c) and 20(1) of the Bombay Primary Education Act, 1947, the District School Board and the authorised Municipality are required to maintain an adequate staff of officers including Attendance officers but under those sections the staff to be maintained must be such asin the opinion of the State Government is necessary forx the administeration management and control of approved schools within their area. The final voice in determining the strength of the staff is thus left with the Government to direct that the staff of Attendance officers is not necessary and thereupon the School Board and the authorised municipality will have tp abolish the post of Attendance officers.

2. Under section 27 of the Act the scheme to provide compulsory primary education contains a schedule of existing and proposed staff of officers including Attendance officers. Under sub-section(1) of section 28, power is given to the Government to sanction the scheme with modifications. Under section 29, Government can modify, cancel or temporarily suspend a sanctioned scheme. Under these provisions it would be accordingly open to Government to modify the schedule of the staff so as to do away with the posts of Attendance officers. No amendment would, therefore, be necessary for the abolitionof the posts of such officers.

Sd/- 25/9

Additional Secretary to Government.

U.P. to P.D. No. 13599, dated the 26th September 1950.

N.V.D.
9/7
4c.

763 Conf. 889-conf.
3-11-50. 7-12-50

Submitted.

This is in connection with the petition made by one H.L. Shirsat to Government complaining against his removal from service in the St. Xavier's school. Shri Shirsat was since the last six years working as a drawing teacher in the St. Xavier's School. In January last he married a Catholic girl. The marriage was registered under the Special Marriage Act. When he reported to the school after his marriage, the Principal told him that marriage before a registrar was inconsistent with the holiness of marriage, and that he should set everything right before joing the school. From Shri Shirsat's letter at page 3 of the correspondence section the Principal is also said to have advised him to perform the ceremoney in a Church, in which case he would have no objectionto Shri Shirsat living with his wife; but that the wife and the children that may be born should attend the church and remain Catholics. Shri Shirsat then wrote to the Principal requesting him to give orders of suspension in writing and to communicate the grounds therefore. But no reply was sent. Subsequently on the intervention of the Education Inspector, Shri Shirsat was in reinstated to his original position on29th April 1950. Full salary was paid to Xxihim in respect of the period

of his absence. On 3-8-1950 however a notice of termination of his services was served on him on the ground of retrenchment. Shri Shirsat considers, and the Educational Inspector and the D.P.I. agree, that the real reason why the School authorities want to get rid of him is his marriage with a Catholic Girl and that this is a case of religious intolerance and victimisation. Since the person concerned has approached Government the H.C.M., inhis minute, at p. 22 ante, has raised the question whether Government has powers to interfere inthe matter.

N.V.D.
9/7
4c.

Office of the F.I.A.

The only possible interference by Government in this case is by way of stoppage of grant. It seems however that Shri Shirsat is shown on the Primary Department of the School which onik that account receives grant from the Schools Committee, so that any action withholding the grant would have to be taken by that Committee. It is of course open to Shri Shirsat to pursue in Court his remedy for ex damages for wrongful termination of services.

Sd/- 27/12

Remembrancer of Legal Affairs.

U.R. to E.D. No. 927-Confl. dated the 28th December 1950.

N.V.D.
9/7
4c.